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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 237

HOUSEHOLD FINANCE CORPORATION,

Appellant,

vs.

DIRECTOR OF THE DIVISION OF TAXATION, DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY,

Respondent.

On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS, BRIEF AND APPENDIX IN SUPPORT THEREOF

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TABLE OF CONTENTS

	PAGE
Motion to Dismiss	1
Opinions Below	1
Questions Presented	3
Statement of the Case	2
A. Nature of Appellant's Business	2
B. Appellant's Tax Returns	4
1. Net Worth	4
2. Allocation Factor	4
C. The determination of tax liability by the State Director of the Division of Taxation	5
1. Net Worth	5
2. Allocation Fraction	5
D. Appellant's contentions before the State Division of Tax Appeals	5
E. The Decision of the New Jersey Supreme Court	7
Summary of Argument	8
Argument:	
Point I — The apportionment of the net worth of a financial business for franchise tax purposes by means of an allocation formula predicated upon a comparison of the gross receipts of the taxpayer constitutes a reasonable method of apportionment and is not violative of the Fourteenth Amendment	10

PAGE

Point II—The statutory allocation fraction, which included among the gross receipts of appellant the dividends, interest and fees which it received from its subsidiary corporations but excluded the direct receipts earned by the subsidiary corporations, did not result in a "palpably disproportionate" apportionment of appellant's net worth to New Jersey for franchise purposes 20

Point III—There exists no substantial federal question on this appeal since it has not been demonstrated that the apportionment of appellant's net worth to New Jersey for franchise tax purposes was "palpably disproportionate" to the value of its local franchise..... 26

CONCLUSION 31

APPENDIX:

A—Excerpts from Appellant's Petition of Appeal 1a

B—Excerpts from Record Below..... 6a

Exhibit P-1—Annex 12 to Statement of Facts 9a

C—Excerpts from Appellant's Main Brief Below 10a

D—Comparison of Allocation Fractions..... 11a

Cases Cited

Allied Stores of Ohio, Inc. v. Bowers, 358 U. S. 522, 79 S. Ct. 437, 3 L. Ed. 2d 480 (1959)..... 17

Bass, Ratcliff & Gretton v. State Tax Commission, 266 U. S. 271, 45 S. Ct. 82, 69 L. Ed. 282 (1924).....18, 29, 31

PAGE

Butler Bros. v. McColgan, 315 U. S. 501, 62 S. Ct. 701, 86 L. Ed. 991 (1942) 13

Cleveland Cliffs Iron Co. v. Michigan Corp. & Sec. Com'n, 352 Mich. 652, 88 N. W. 2d 564 (Sup. Ct., 1958) 13

Commonwealth v. Columbia Gas & Electric Corp., 336 Pa. 209, 8 A. 2d 404 (Sup. Ct., 1939) 31

Commonwealth v. Ford Motor Co., 350 Pa. 236, 38 A. 2d 329 (Sup. Ct., 1944), appeal dismissed for lack of substantial federal question, 324 U. S. 827, 65 S. Ct. 857, 89 L. Ed. 1394 (1945) 22, 31

Commonwealth v. Koppers Company, 397 Pa. 523, 156 A. 2d 328 (Sup. Ct., 1959) 22, 26

Ford Motor Co. v. Beauchamp, 308 U. S. 331, 60 S. Ct. 273, 84 L. Ed. 304 (1939), rehearing denied, 308 U. S. 640, 60 S. Ct. 273, 84 L. Ed. 531 (1940) 8, 11, 13, 18, 31

Ford Motor Co. v. Oklahoma Tax Commission, 188 Okla. 78, 106 P. 2d 803 (Sup. Ct., 1940) 13

Gulf Oil Corporation v. Morrison, 120 Vt. 324, 141 A. 2d 671 (Sup. Ct., 1958) 26

Hans Rees' Sons v. State of North Carolina, 283 U. S. 123, 51 S. Ct. 385, 75 L. Ed. 879 (1913) 29

Household Finance Corp. v. State Tax Com'n, 217 Md. 327, 142 A. 2d 807 (Ct. of App., 1958) 13

International Harvester Co. v. Evatt, 329 U. S. 416, 67 S. Ct. 444, 91 L. Ed. 390 (1947) 28

Koppers Co., Inc. v. State of Pennsylvania, 364 U. S. 286, 81 S. Ct. 43, 5 L. Ed. 2d 38 (1960) 26

PAGE

Morris & Essex Investment Co. v. Director of Division of Taxation, 33 N. J. 24, 161 A. 2d 491 (1960) 14

National, C & St. L. Ry. v. Browning, 310 U. S. 362, 60 S. Ct. 968, 84 L. Ed. 1254 (1940) 28

Northwestern States Portland Cement Co. v. Minnesota, 358 U. S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421 (1959) 29

Railway Express Agency v. Virginia, 358 U. S. 434, 79 S. Ct. 411, 3 L. Ed. 2d 450 (1959) 13, 26

Smoot Sand & Gravel Corp. v. District of Columbia, 261 F. 2d 758 (D. C. Cir., 1958), cert. denied, 359 U. S. 968, 79 S. Ct. 876, 3 L. Ed. 2d 834 (1959) 13

Underwood Typewriter Co. v. Chamberlain, 254 U. S. 41 S. Ct. 45, 65 L. Ed. 165 (1920) 18, 29

Virginia Electric and Power Company v. Currie, 254 N. C. 17, 118 S. E. 2d 155 (Sup. Ct., 1961), appeal dismissed, 367 U. S. 910, 81 S. Ct. 1919, 6 L. Ed. 2d 1250 (1961) 13

Wallace v. Hines, 253 U. S. 66, 40 S. Ct. 435, 64 L. Ed. 782 (1920) 30, 31

Werner Mach. Co. v. Div. of Taxation, 350 U. S. 492, 76 S. Ct. 534, 100 L. Ed. 634 (1956) 29

Williams v. Stockham Valves & Fittings Inc., 358 U. S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421 (1959) 29

United States Constitution Cited

14th Amendment 2, 10, 19, 26

PAGE

Statutes Cited

Financial Business Tax Law (1946) 7, 28

N.J.S.A. 54:10A-5(b), 6 14

N.J.S.A. 54:1B-1 4

N.J.S.A. 54:10B-1 ..... 2, 3, 10, 11, 14

N.J.S.A. 54:10B-6 6

N.J.S.A. 54:10B-8 10

N.J.S.A. 54:10B-8(a) 25

N.J.S.A. 54:10B-8(c) 25, 26

N.J.S.A. 54:10B-8(e) 25

Rule Cited

Rule 16(b) 1

Miscellaneous

First Report of the Commission of State Tax Policy (1946): 14

pp. 29-31 17

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Respondent.

On Appeal from the Supreme Court of New Jersey

Motion to Dismiss

Pursuant to Rule 16(b) of this Court, the Attorney General of the State of New Jersey, on behalf of the State of New Jersey, moves to dismiss this appeal on the ground that it does not present a substantial Federal question.

Opinions Below

The opinion from which appellant appeals to this Court is that of the Supreme Court of New Jersey entered January 22, 1962, reported in 36 N. J. 353, 177 A. 2d 738 (1962). The Supreme Court of New Jersey denied a petition for rehearing on March 26, 1962.

Questions Presented

1. Does the allocation of the net worth of a multi-state small loan finance business, for purposes of a state franchise tax, in accordance with an apportionment formula based upon a comparison of gross receipts within the taxing state to gross receipts everywhere, constitute a palpably unreasonable method of tax apportionment contrary to the due process clause of the 14th Amendment?

2. Does the inclusion in the denominator of a gross receipts apportionment formula (constituting total gross receipts) of the receipts of the appellant derived directly from small loan customers, together with appellant's receipts consisting of dividends, interest and fees paid to it by wholly-owned subsidiary corporations engaged in the same small loan finance business, without the inclusion of the gross receipts of the subsidiary corporations from their small loan customers, constitute a violation of the 14th Amendment because the investment in the subsidiary corporations is included as an asset in the computation of appellant's total net worth.

3. Has the appellant raised a substantial Federal question when it has failed to demonstrate that the proportion of its net worth allocated to New Jersey in accordance with the New Jersey statute is "palpably disproportionate" to the value of its local privilege or franchise?

Statement of the Case

A. Nature of Appellant's Business.

The appellant, Household Finance Corporation, conducts a multi-state small loan finance business throughout the United States and in Canada. It operates this small loan finance business in the State of New Jersey. It is admittedly subject to the New Jersey Financial Business Tax

Law (1946), N.J.S.A. 54:10B-1 *et seq.* This statute has been summarized by appellant in its Jurisdictional Statement and the pertinent provisions are set forth therein.

The appellant conducts its business through branch offices as well as subsidiary corporations and in the tax years in question, 1954 to 1957, inclusive, it maintained between 417 and 445 branch offices in the United States, of which 17 were in New Jersey. It also owned subsidiary corporations which in the United States totaled 24 as of the end of 1953 and numbered 155 by the end of 1956. There were no subsidiaries in New Jersey in 1954; there were 2 in 1955; 7 in 1956; and 10 in 1957. Of these, 1 was active in 1956 and 4 in 1957. Its Canadian operations were conducted through subsidiary corporations.

Appellant also owned considerable sums of cash which it kept on hand, in banks and in transit. It also held accounts receivables, securities, office equipment and the like. These assets have been referred to as "headquarter assets" although its substantial sums of cash were consistently and continuously circulated throughout its entire nationwide enterprise.

In addition to the foregoing, appellant carried as an asset substantial advances to its subsidiaries for the purpose of providing these subsidiaries with funds for loans to the general public. Appellant also carried as an asset the loans or loan accounts which it made directly to small loan borrowers or customers.

Appellant's receipts or gross income consisted of the interest which it collected on its loans made to the general public through its numerous branch offices. From its subsidiary corporations the appellant received interest paid by the subsidiaries on the loans or advances made to them; it received dividends paid by the subsidiary corporations on capital stock; and appellant also received payments de-

nominated "supervision fees" paid by the subsidiary corporations for various administrative and related services rendered by appellant.

It is conceded that the appellant's business and operations were integrated and unitary (Resp. App. B, 6a). Appellant maintained centralized supervision, direction and control over its entire nationwide business, which control was exerted over branch offices as well as its subsidiary corporations. There was centralized administration and accounting. Corporate assets and funds were circulated throughout the enterprise, among both subsidiary offices and branch offices. Personnel and employees were likewise assigned throughout the entire enterprise and all of the branch offices and the subsidiary corporations utilized a name or title which identified them with the appellant, Household Finance Corporation.

B. Appellant's Tax Returns.

1. Net Worth.

For the tax years involved, appellant filed tax returns under the Financial Business Tax Law (1946), N.J.S.A. 54:1-B-1 *et seq.* In its returns, the appellant excluded from "entire net worth" its entire capital stock investment in and advances to its subsidiary corporations. Appellant did include, however, in the computation of net worth, subject to allocation, its so-called "headquarter assets".

2. Allocation Factor.

In determining the proportion of net worth to be allocated to New Jersey for tax purposes, appellant did not include in the denominator of the gross receipts fraction any receipts which appellant derived from its subsidiary corporations, these receipts consisting of interest, dividends and supervision fees.

C. The determination of tax liability by the State Director of the Division of Taxation.

1. Net Worth.

The State Director of the Division of Taxation made a redetermination of appellant's tax liability. So far as pertinent herein, the Director determined that the capital stock of and advances to appellant's subsidiary corporations should be considered as assets in the computation of total net worth and that the capital stock should be valued, not at cost per appellant's books, but according to the value disclosed by the books of the subsidiary corporations.

2. Allocation Fraction.

The Director determined that there be included in the denominator of the gross receipts allocation fraction the gross income received by appellant from its subsidiary corporations. This had the net effect of *decreasing* the allocation fraction for each of the years involved as originally reported by appellant in its tax returns. Thus, in 1954 appellant's allocation fraction was 5.88% compared with the Director's recomputation of 5.61%; in 1955 the appellant's fraction was 5.61% compared with the Director's 4.72%; in 1956 the appellant's was 5.31% compared with the Director's 4.38% and in 1957 the appellant's was 5.03% compared with the Director's 3.61%.

D. Appellant's contentions before the State Division of Tax Appeals.

The appellant appealed from the redetermination of the Director of Taxation to the State Division of Tax Appeals in accordance with the appropriate statute and regulations. Before the Division of Tax Appeals the appellant contended that its ownership of its subsidiary cor-

porations was not a part of its financial business but was "a holding-company business" (Resp. App. A, 1a). It contended that the receipts which it received from its subsidiary corporations were "an incident to [its] said holding-company business" (Resp. App. A, 1a-2a). Appellant contended that it was error on the part of the Director of Taxation to include its investment in subsidiary corporations as a part of net worth, and it further contended that the inclusion in net worth and the valuation of the capital stock by the State Director of Taxation amounted to a "consolidation" of appellant's net worth, which it protested (Resp. App. A, 2a). At the hearing, however, appellant indicated that it was proper to include the subsidiaries in net worth (Resp. App. B, 6a).

Appellant further complained that the allocation fraction as recomputed by the Director was erroneous because it excluded from the denominator of the gross receipts allocation fraction, the receipts of the subsidiary corporations from their small loan customers and it included with the receipts of appellant from its customers the payments received by the appellant from the subsidiary corporations consisting of dividends, interest and supervision fees. The appellant contended that this computation by the State Director mixed "consolidated factors with unconsolidated factors having no reasonable relationship to one another" (Resp. App. A; 3a-4a).

Appellant noted in its Petition of Appeal that the State Director had acceded to its demand that appellant be permitted to deduct from net worth a proportionate amount of the capital stock of appellant's subsidiary corporations which it operated in New Jersey during the tax years involved and which were themselves separately taxable under the statute (Resp. App. A, 4a). This deduction is authorized under N.J.S.A. 54:10B-6 (Appl. App. C, 38a-39a).

Additionally, appellant took the position that its so-called "headquarter assets" should be excluded from net worth because they were "located entirely outside New Jersey" (Resp. App. A, 4a-5a).

In its prayer for relief, appellant sought, among other things, to set aside the "adjustments and redeterminations" made by the State (Resp. App. A, 5a).

E. The Decision of the New Jersey Supreme Court.

The State Division of Tax Appeals affirmed the determination of the State Director of Taxation (Appl. App. B, 16a-35a). The appellant appealed from this judgment to the Superior Court, Appellate Division of New Jersey, and the New Jersey Supreme Court certified the appeal to it.

The Supreme Court of New Jersey held that the Financial Business Tax Law (1946) does not constitute an *ad valorem* property tax but is a tax upon the franchise to do a local finance business within the State of New Jersey; that the appellant's multi-state finance business was unitary in character and that the so-called "headquarter assets" were part of an operating whole utilized by the appellant throughout its entire nationwide operations, including those in New Jersey and, it was therefore proper to include such assets in the computation of net worth subject to allocation. The New Jersey Supreme Court also held that the allocation fraction computed by the Director was reasonable. It pointed out that the evidence proffered by appellant in the form of alternative allocation fractions did not indicate that the allocation fraction imposed by the statute was inappropriate or unreasonable or that the proportion of net worth actually allocated to New Jersey was "palpably disproportionate" to the value of appellant's local franchise. The Supreme Court further emphasized that while the appellant appeared to be arguing

that its subsidiary corporations should be "consolidated" for purposes of computing the allocation fraction, it nevertheless maintained that its subsidiary corporations operating within New Jersey remain "unconsolidated", *i.e.*, that the value of these subsidiary corporation be deducted from its net worth subject to allocation. The Supreme Court of New Jersey further stressed that the statute did not permit the filing of consolidated returns with respect to a taxpayer and affiliated or subsidiary corporations (with one minor exception) and that it was not unreasonable for the State to impose a tax upon a corporate taxpayer in accordance with its own corporate structure.

Summary of Argument

Appellant does not contend before this Court that it was improper to include in the computation of its net worth subject to allocation its so-called headquarter assets or its investment in subsidiary corporations. The inclusion of these assets, concededly an integral part of appellant's unitary business and operations, is unquestionably valid. *Ford Motor Co. v. Beauchamp*, 308 U. S. 331, 60 S. Ct. 273, 84 L. Ed. 304 (1939) *rehearing denied* 308 U. S. 640, 60 S. Ct. 273, 84 L. Ed. 531 (1940).

Appellant's contentions revolve about the allocation formula prescribed by the New Jersey statute and applied by the State Director of the Division of Taxation. Its contentions are twofold. It argues that the allocation formula based upon gross receipts is bad because there is included in net worth the so-called "headquarter assets" which, appellant alleges, do not "directly" produce revenues themselves; therefore, appellant alleges the allocation formula "disregards headquarters values" and "mismeasures the portion of * * * net worth reflecting non-revenue producing headquarters" (see pages 8, 9 of appellant's Juris-

dictional Statement). Appellant also argues that the allocation formula is bad because there is not included in the denominator thereof, consisting of appellant's total gross receipts, the direct receipts earned by the subsidiary corporations. In effect, appellant alleges this "penalizes the use of corporate subsidiaries" and "mismeasures the portion of net worth reflecting the full net value of appellant's investment in wholly-owned subs which themselves receive gross receipts" (see pages 8, 9 of appellant's Jurisdictional Statement).

The State of New Jersey argues herein that the statutory allocation fraction whereby the net worth of a multi-state taxpayer engaged in a financial business in New Jersey is apportioned to New Jersey for tax purposes by a comparison of the gross receipts earned in New Jersey with gross receipts earned everywhere is appropriate and is reasonably calculated to allocate to New Jersey a fair proportion of total net worth, and that the reasonableness of an apportionment formula based upon gross receipts has been recognized and upheld by many courts including the Supreme Court of the United States. It is further argued herein that the computation of the proportion of the appellant's net worth to be allocated or apportioned to New Jersey for tax purposes by a fraction which includes in the denominator thereof the receipts which the appellant received from its subsidiary corporations was in accordance with the clear provisions of the statute and was reasonable; and that the exclusion from the denominator of the gross receipts of the subsidiary corporations derived from their direct operations was likewise in accordance with the statute which does not, in this instance, sanction consolidated returns, and was consistent with the corporate structure of appellant's enterprise and was not unreasonable. Finally, it is argued that the appellant has not by "clear and cogent evidence" demonstrated that any other alloca-

tion fraction based upon other factors or its own separate system of accounting was necessarily more reasonable in determining the proportionate amount of its net worth which should be allocated to New Jersey for tax purposes, and that the actual proportion of net worth allocated to New Jersey by the statutory gross receipts formula did not result in a "palpably disproportionate" attribution of net worth to New Jersey for tax purposes.

For these reasons it is respectfully submitted that the appellant has raised no substantial federal question which would warrant this appeal and that the appeal should, therefore, be dismissed.

ARGUMENT

POINT I

The apportionment of the net worth of a financial business for franchise tax purposes by means of an allocation formula predicated upon a comparison of the gross receipts of the taxpayer constitutes a reasonable method of apportionment and is not violative of the Fourteenth Amendment.

The method employed by the New Jersey Financial Business Tax Law (1946), N.J.S.A. 54:10B-1 *et seq.* for determining the proportion of a subject taxpayer's net worth which should be allocated to the State of New Jersey for tax purposes is based upon a comparison between the amount of business done in New Jersey with the amount of business done everywhere. The statute defines this allocation fraction as the taxpayer's gross receipts arising from its New Jersey business divided by its gross receipts arising from its business done everywhere. N.J.S.A. 54:10B-8. The only constitutional question with respect to the

use of a particular allocation fraction is whether or not it is reasonably designed and calculated to apportion to the taxing state a fair proportion or amount of a taxpayer's total net worth.

The utilization of an apportionment formula based upon gross receipts has been recognized as valid by this Court. In *Ford Motor Co. v. Beauchamp, supra*, this court held that the use of a gross receipt's allocation fraction for the purpose of apportioning total net worth is constitutionally sound. In this case, Texas imposed an "annual franchise tax on all corporations chartered or authorized to do business in Texas, measured by a graduated charge upon such proportion as the out-standing capital stock, surplus and undivided profits of the corporation, plus its long-term obligations, as the gross receipts of its Texas business bear to the total gross receipts of its entire business". Thus, the subject matter of the Texas tax was the same as that of the New Jersey Financial Business Tax Law (1946), *i.e.*, the privilege of doing an intrastate business within the taxing state. Moreover, the measure of the Texas tax was identical with that of the New Jersey tax, *i.e.*, net worth apportioned to the taxing state in proportion to gross receipts. The taxpayer's gross receipts from business done in Texas during the year in question amounted to approximately $34,000,000.00; its total gross receipts were approximately $888,000,000.00. Thus, the ratio of Texas receipts to total receipts was approximately 3.85%. The taxpayer's total taxable capital was $600,000,000. Consequently, the statutory formula allocated to Texas a tax base in excess of $23,000,000.00. The value of the taxpayer's assets physically located within Texas was only somewhat over $3,000,000.00.

Ford Motor Co. advanced the same arguments presented by appellants herein, namely, that the tax as assessed de-

prived it of its property without due process of law because it was a tax upon property neither located nor used within the State of Texas and activities conducted beyond the borders of Texas *i.e.*, that it was a tax upon "extra territorial values". This Court rejected these contentions, stating:

> "The statute calls the excise a franchise tax. It is obviously payment for the privilege of carrying on business in Texas. There is no question but that the State has the power to make a charge against domestic or foreign corporations for the opportunity to transact this intrastate business. The exploitation by foreign corporations of intrastate opportunities under the protection and encouragement of local government offers a basis for taxation as unrestricted as that for domestic corporations. In laying a local privilege tax, the state sovereignty may place a charge upon that privilege for the protection afforded. When that charge, as here, is based upon the proportion of the capital employed in Texas, calculated by the percentage of sales which are within the state, no provision of the Federal Constitution is violated." 308 U. S. at pp. 334, 335; 60 S. Ct. at p. 275; 84 L. Ed. at pp. 305, 306.
>
> "In a unitary enterprise, property outside the state, when correlated in use with property within the state, necessarily affects the worth of the privilege within the state. Financial power inherent in the possession of assets may be applied, with flexibility, at whatever point within or without the state the managers of the business may determine. For this reason it is held that an entrance fee may be properly measured by capital wherever located. The weight, in determining the value of the intrastate privilege, given the property beyond the state boundaries is but a recognition

of the very real effect its existence has upon the value of the privilege granted within the taxing state," 308 U. S. at p. 336; 60 S. Ct. at p. 276; 84 L. Ed. 306, 307.

The *Beauchamp* case does not stand alone as a decision recognizing the validity of utilizing an allocation fraction based upon receipts. Other decisions have upheld the propriety of a gross receipt's allocation formula for tax purposes. E.G. *Railway Express Agency* v. *Virginia*, 358 U. S. 434, 79 S. Ct. 411, 3 L. Ed. 2d 450 (1959); *Smoot Sand & Gravel Corp.* v. *District of Columbia*, 261 F. 2d 758 (D. C. Cir. 1958), *cert. denied* 359 U. S. 968, 79 S. Ct. 876, 3 L. Ed. 2d 834 (1959); *Ford Motor Co.* v. *Oklahoma Tax Commission*, 188 Okla. 78, 106 P. 2d 803 (Sup. Ct. 1940); *Household Finance Corp.* v. *State Tax Com'n*, 217 Md. 327, 142 A. 2d 807 (Ct. of App. 1958); *Virginia Electric and Power Company* v. *Currie*, 254 N. C. 17, 118 S. E. 2d 155 (Sup. Ct. 1961), *appeal dismissed* 367 U. S. 910, 81 S. Ct. 1919, 6 L. Ed. 2d 1250 (1961).

In contending that the statutory gross receipts allocation formula is inappropriate to allocate its net worth, appellant disregards completely the crucial and important fact that the statute applies to business entities conducting a financial business within the State of New Jersey. It has been recognized that the tax base of a general or ordinary business corporation may be apportioned or allocated for franchise tax purposes in accordance with formulae based upon several combined factors or items. Thus, states have frequently employed allocation formulae consisting of property, payroll and receipts in such circumstances. E.g. *Butler Bros.* v. *McColgan*, 315 U. S. 501, 62 S. Ct. 701, 86 L. Ed. 991 (1942); *Cleveland-Cliffs Iron Co.* v. *Michigan Corp. & Sec. Com'n*, 351 Mich. 652, 88 N. W. 2nd 564 (Sup. Ct. 1958). Indeed, the State of New Jersey in determining the measure of the franchise tax upon gen-

eral business corporations provides for allocation in accordance with a ratio or fraction consisting of tangible property, receipts, and payrolls or in the alternative (where such a fraction would be greater), one based upon tangible and intangible assets. N.J.S.A. 54:10A-5(b), 6. It does not follow, however, that the utilization of an allocation fraction based upon gross receipts is inappropriate or not reasonably designed to effect a fair and sensible apportionment of the net worth of a financial business.

The Legislature of the State of New Jersey in enacting the Financial Business Tax Law (1946) followed the recommendations of a special committee which studied the overall problem of taxing monied capital in competition with national banks. The history of this legislation is set forth in *Morris & Essex Investment Co.* v. *Director of Division of Taxation*, 33 N. J. 24, 161 A. 2d 491 (1960) and is alluded to by the New Jersey Supreme Court in its decision below. The findings and recomendations which served as a basis for the Financial Business Tax Law (1946) are set forth in the First Report of this committee wherein it was stated:

> "The application of the proposed capital stock tax to corporations of this and other states requires a method of identifying that portion of the capital value to be used as a measure of the tax. This problem has not arisen in the bank stock tax for the reason that banks are not authorized to maintain a place of business outside the county of their principal office. It need hardly be noted that competing moneyed capital is not so restricted, and in fact, corporations which may and do operate on a national basis are a principal source of competition. Both tax law and sound policy require that this characteristic of the competing business be recognized in the proposed legislation."
>
> "The selection of a method of allocation depends upon the type of tax with which it will be used. If

the proposed tax were deemed to be a property tax, the matter of allocation would be reduced to the simple proposition that the State may constitutionally tax only such property as may be found within the State. Such situs determination for the purposes of a capital stock tax would at least find deductions for all tangibles located outside the State, for all Federal government securities (as immune from taxation) and for all other items of property (e.g. municipal obligations) which State policy might desire to leave free of a capital levy. These deductions would apply to a domestic corporation. Foreign corporations could be subject to a measure including only that proportion of their capital employed within the State.

"Under an excise tax measured by capital, as proposed, there is considerably more freedom to achieve a working equality of treatment as among the various classes of taxpayers, foreign and domestic corporations and unincorporated business. In the State's general business tax—what is known as 'the corporate net worth tax'—there are similar considerations and the so-called Massachusetts formula was adopted. This formula allocates by using an average of three factors, payroll, tangible property, gross receipts, in and out of the State. In the case of a business where one or more of these factors may be practically inapplicable, it may be omitted. Financial business is a principal instance of this kind.

"It is inherent in financial business that neither payroll nor tangible property should ordinarily be revelant factors in a determination of the location or amount of capital employed. The Supreme Court has clearly described the business involved for present purposes as an enterprise in which the capital em-

ployed is money, where the object of the business is the making of profit by its use as money, such as investment and reinvestment in securities by way of loan, discount, or otherwise, loans on collateral security, negotiation of loans, either as an instrument of a permanent character or temporarily with a view to sale or repayment and reinvestment.

"It is apparent from this definition that either the average amount of loans and discounts placed through New Jersey offices (as compared with the amount everywhere) or the gross business done through New Jersey offices (as compared with the gross everywhere) would be a satisfactory measure of the employment of competing capital in this State.

"Thus, a national corporation which has a total of $5 million in loans outstanding and which has four offices in New Jersey with total outstandings of $500,000 might allocate 10 per cent of its total capital, surplus and undivided profits to New Jersey. This 10 per cent of the total which is allocated to New Jersey would in turn be allocated as among the four New Jersey offices according to the amount of loans outstanding of each of them.

"Outstandings might not be satisfactory, however, to allocate capital of an investment company which may deal partly in stock equities and partly in Governments and municipals. For this type of company, gross business might be a more practical measure of allocation. It could be defined as the sum of:

1) Fees, commissions or other compensation for financial services rendered within this State.

2) Gross profits from trading in stocks, bonds or other securities managed within this State.

3) Interest and dividends received on loans, stocks, bonds and other securities managed within this State.

4) Interest charged to customers, at places of business maintained within this State, for carrying debit balances of margin accounts, without deduction of any costs incurred in carrying such accounts.

5) Any other gross income resulting from the operation of financial business within this State.

divided by the aggregate amount of such items of the taxpayer everywhere.

"The advantage of a single formula, reasonably related to turnover of capital in New Jersey, as compared with the possible use of outstandings, seems to justify the somewhat more complicated gross business basis. The *Commission* accordingly recommends:

V. THAT CAPITAL EMPLOYED BE ALLOCATED IN PROPORTION TO GROSS BUSINESS DONE IN NEW JERSEY, AS HEREIN DEFINED." (*First Report of the Commission of State Tax Policy* (1946), pp. 29-31.)

It cannot be contended, therefore, that the allocation formula predicated upon gross receipts is unreasonable and certainly, none of the appellant's arguments should serve to displace the judgment of the New Jersey State Legislature in determining to use such a formula. *Cf. Allied Stores of Ohio, Inc.* v. *Bowers*, 358 U. S. 522, 79 S. Ct. 437, 3 L. Ed. 2d 480 (1959).

Appellant argues that the gross receipts formula is not reasonable because it is applied to net worth computed in part by assets which themselves do not directly produce revenue or receipts. Appellant refers specifically to its so-called "headquarter assets" which consist largely of the

very substantial sums of money which it keeps on hand, in banks, and in transit and which circulate throughout its entire enterprise and constitutes the funds which it loans to the general public. The distinction between cash which is used for the purposes of loans and outstanding loan or loan accounts which admittedly "produce" revenue is tenuous in a small loan finance business such as that of appellant wherein there is a rapid turnover of cash and liquidation of loans. Moreover, even if it be conceded that the so-called "headquarter assets" do not themselves produce revenue obviously they are vitally necessary for the production of revenue and receipts and hence are appropriately included in net worth to be allocated according to the business done by the appellant. *Cf. Bass, Ratcliff & Gretton* v. *State Tax Commission*, 266 U. S. 271 45 S. Ct. 82, 69 L. Ed. 282 (1924); *Underwood Typewriter Co.* v. *Chamberlain*, 254 U. S. 41 S. Ct. 45, 65 L. Ed. 165 (1920); *Ford Motor Co.* v. *Beauchamp, supra.*

Appellant's argument in this respect confuses the tax in question with an *ad valorem* tax upon property. The New Jersey Supreme Court has explicitly rejected this characterization of the tax. It stated:

> "* * * Household argues that these ['household'] assets have their *situs* in Chicago and that unless they are excluded from net worth, New Jersey would tax extraterritorial values in violation of the due process provision of the *Federal Constitution.*
>
> "The statute does not tax assets beyond the State. Rather, it imposes an excise tax upon the doing of financial business in New Jersey. N.J.S.A. 54:10B-3. That the tax is assessed upon a portion of net worth does not mean that it is an *ad valorem* assessment upon any of the underlying properties. *Werner Machine Co.* v. *Director of Division of Taxation*, 17 N. J. 121

(1954), affirmed 350 U. S. 492, 76 S. Ct. 534, 100 L. Ed. 634 (1956). Net worth simply sums up the relationship between assets and liabilities and thus expresses the experience of an enterprise. It is not 'property' and of course is not an 'asset' in a balance sheet. It is merely a concept, without tangible *situs* in any specific asset.

"In a sense, the excise tax may gather the hue of a property tax, but if so viewed, it is the franchise to local business that is being valued rather than any specific piece of property devoted to it. In thus appraising the worth of a franchise, it is fitting to refer to 'net worth,' for the franchise ultimately contributes to that balance-sheet result. And in dealing with a multi-state business, unitary in nature, it is reasonable to assume the franchise to do business in this State contributes to the net worth in the proportion that the business done here bears to the total business of the taxpayer" (Court's emphasis) (36 N. J. at p. 358, 177 A. 2d at p. 741)

It is respectfully submitted, therefore, that the utilization of an allocation formula based upon gross receipts for purposes of apportioning the net worth of a financial business such as that of appellant, for franchise tax purposes, is entirely reasonable and that the inclusion in appellant's net worth of its so-called "headquarter assets" for allocation purposes was reasonable and consistent with the due process requirements of the Fourteenth Amendment.

POINT II

The statutory allocation fraction, which included among the gross receipts of appellant the dividends, interest and fees which it received from its subsidiary corporations but excluded the direct receipts earned by the subsidiary corporations, did not result in a "palpably disproportionate" apportionment of appellant's net worth to New Jersey for franchise purposes.

Plaintiff complains that the computation of the allocation fraction under the statute by the State Director of the Division of Taxation was unreasonable because it "penalizes the use of corporate subsidiaries". Specifically, plaintiff complains that it is improper to include in the denominator of the fraction (consisting of appellant's total gross receipts earned everywhere) the dividends, interest and supervision fees which appellant's subsidiary corporations paid to it during the tax years in question. This error, appellant contends, was compounded by the exclusion from these *gross receipts of the receipts earned directly* by the subsidiary corporations on the small loan business conducted by them.

At the hearing before the State Division of Tax Appeals, the appellant offered several alternative methods for apportioning its net worth. It demonstrated the results of apportionment on various bases such as receipts, assets, consolidated assets, consolidated receipts and consolidated net operating income (Resp. App. B, 8a-9a; App. C, 10a). It also adduced evidence as to apportionment based upon "consolidated loan accounts" (Appl. App. B, 7a).

Appellant did not establish by these comparative methods of apportioning net worth that the apportionment formula of the New Jersey statute, based upon "unconsoli-

dated" gross receipts was unreasonable. In fact, the testimony of its own expert demonstrates that the New Jersey apportionment formula, while not perfect, was not unreasonable.*

Appellant, on this appeal, appears to eschew any particular method of apportionment. Thus it states by way of a footnote to its schedule appearing on page 7 of its Jurisdictional Statement that it "does not advocate a consolidated gross receipts allocation formula or an allocation formula based on any other specific theory". Yet the schedule on that page purports to make a comparison of an apportionment based upon "consolidated gross receipts" with the statutory apportionment based upon "unconsolidated" gross receipts. As will be argued under Point III, *infra*, there does not appear to be a sufficiently substantial difference between the apportionment formula utilized by appellant by way of "illustration" and the statutory formula utilized by the State Director of Taxation which would justify a reversal of the decision of the court below.

Even though appellant states that it does not espouse an allocation formula based on "consolidated" gross receipts, it nevertheless argues that the statutory apportionment formula was erroneous because it did not include in the denominator thereof the gross receipts of the subsidiary corporations. In other words, appellant does in

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* "Q. What, then, is your opinion as to the appropriateness and reasonable accuracy from an accountancy standpoint of the 6 apportionment methods? A. Well, I think each method would produce reasonable accurate results. None of them are perfect. Each has some defects, but they all bear some relationship to the contribution of net worth of each individual segment of business of the corporation. * * *" (Resp. App. B; 7a) Included in the "6 apportionment methods" is the statutory apportionment based upon the "unconsolidated" receipts of appellant.

fact argue the apportionment formula was erroneous because the denominator did not consist of "consolidated" gross receipts of appellant and its subsidiaries.

The inclusion in total net worth of the appellant's capital stock in the subsidiary corporations, subject to apportionment, does not require the inclusion in the allocation factor of the gross receipts earned by the subsidiary corporations. It was held, for example, in *Commonwealth v. Koppers Company, infra*, that the *omission* from the tax base consisting of taxable net income of certain types of receipts did not require that these receipts be similarly omitted from an allocation fraction based upon gross receipts (397 Pa. 523, 529, 156 A. 2d 328, 332 (Sup. Ct. 1959)). A similar determination was made in *Commonwealth v. Ford Motor Co.*, 350 Pa. 236, 38 A. 2d 329 (Sup. Ct. 1944), *appeal dismissed for lack of substantial federal question*, 324 U. S. 827, 65 S. Ct. 857, 89 L. Ed. 1394 (1945).

More significantly, close scrutiny of appellant's position discloses that it did not below nor does it before this Court seek to establish a tax base upon a truly "consolidated" position. The New Jersey Supreme Court quite properly discerned this:

> "What Household sought was a hybrid result under which its corporate lines would be respected as to New Jersey operations and disregarded elsewhere. More specifically, Household wanted the right to file separate returns for the New Jersey subsidiaries while using a consolidated approach with respect to the others. It in fact did file separately for the New Jersey subsidiaries, and upon the redetermination insisted before the Director that their net worth be excluded from total net worth under N.J.S.A. 54:10B-6(a)(3), a proposition with which the Director agreed. So also Household excluded the gross receipts of New Jersey subsidiaries from the allocation fraction.

"After oral argument we sought clarification of Household's position in this respect. We were informed:

"'However, the statute (¶6) requires that Taxpayer's subsidiaries which are active in New Jersey be separately taxed on their own local franchises. The statute shows a clear legislative intent to draw a distinction between the local subs' own franchise to operate locally, which is separately taxable, and the Taxpayer's distinctive franchise to own those subs, which is taxable or not according to where it is held and exercised. Accepting the statutory distinction (as both parties do), the problem is simply to measure the portion of Taxpayer's net worth which represents this value and to determine its taxable situs.'

And further:

"'. . . . Moreover, if the disregard of corporate lines appears to be only a partial one (that is, the middle ground under which Taxpayer's New Jersey subs are fractioned off individually), this is solely because of the explicit requirements of ¶6, which requirements, incidentally, both parties accept and which therefore should be accepted by the Court as binding for the purposes of this appeal.'

"Quite obviously, if the gross receipts of the New Jersey subsidiaries were included in the numerator and denominator of the allocation fraction, the fraction would be enlarged. This is apparent from a simple example, let us say, of adding 5 to the numerator and denominator of the fraction 5/20 which would result in the fraction 10/25. If the fraction, augmented above and below the line by the gross receipts of the New

Jersey subsidiaries, were applied to the total net worth, the portion allocable to New Jersey would not necessarily be the same as the total of (1) the net worth of the New Jersey subsidiaries and (2) the portion of Household's remaining net worth allocated to New Jersey by a fraction having the New Jersey branch office receipts as the denominator. We do not know the tax-dollar consequences for the years in question of that dual approach, but it seems clear that, in espousing the split approach we have described (cf. *Household Finance Corp.* v. *State Tax Comm'n*, 217 Md. 327, 142 A. 2d 807 (Ct. App. 1958)), Household seeks an opportunity to control its total tax by the expedient of deciding which New Jersey offices to operate through subsidiaries and which to operate as branches.

"The statute permits Household to operate in New Jersey through subsidiaries with separate treatment of them. Household simply seeks to fashion still another choice, whereby it may 'consolidate' its out-of-State operations while maintaining the integrity of corporate lines with respect to the New Jersey segment of its total operations. The statute does not permit and surely due process does not require that incongruity." 36 N. J. pp. 363, 364, 177 A. 2d pp. 744, 745.

With respect to propriety of the inclusion in the denominator of the allocation fraction of the interest, supervision fees and dividends, it appears clearly that these receipts should be considered as the receipts of the appellant in the conduct of its general financial business in accordance with its own corporate structure.

In the year ending December 31, 1953, appellant had loaned its subsidiaries $96,628,926; in the year 1954, $108,600,062; in the year ending 1944, $146,495,915.11 and in the year ending 1956, $206,837,923.04. These loans or advances represented the bulk of the funds which the subsidiaries loaned to individual customers through their own branch offices in the course of carrying out their small loan finance business. In each of the foregoing years respectively appellant received $649,346.65, $2,862,821.37, $4,533,564.01 and $7,934,902.16 as interest on these loans. The appellant obviously considered that the gross receipts which it received as interest on personal loans made directly by it through its own branches constituted "interest and dividends received on loans," within the meaning of N.J.S.A. 54:10B-8(c). In the eyes of the statute, the interest received by appellant from its loans or advances to subsidiaries stand in no different posture from interest received on loans to individual borrowers. The rates might be different. The classes of borrowers differ and, perhaps there is some underlying, undisclosed motivation in making loans or advances to subsidiaries which differs from the policy applicable in making loans directly to the public. Gross receipts from both types of loans, however, constitute interest or other compensation for financial services within the meaning of the statute.

It is equally clear that appellant's receipts, denominated "supervision fees" paid by the subsidiary corporation for the various services furnished by appellant are "fee, commissions, or other compensation for financial services within the meaning of N.J.S.A. 54:10B-8(a). At the very least, they fall within the ambit of "any other gross income resulting in the operation of financial business within this state." (N.J.S.A. 54:10B-8(e)).

Nor, can it be contended satisfactorily that the dividends paid to the appellant by its subsidiary corporations were

not properly included in the denominator of the allocation fraction by the Director. Assuredly, such dividends are "* * * dividends received on * * * stocks" within the meaning of N.J.S.A. 54:10B-8(c). *Gulf Oil Corporation* v. *Morrison*, 120 Vt. 324, 141 A. 2d 671 (Sup. Ct. 1958); *Commonwealth* v. *Koppers Company*, 397 Pa. 523, 156 A. 2d 328 (Sup. Ct. 1959), *appeal dismissed for want of a substantial federal question, sub nom. Koppers Co., Inc.* v. *State of Pennsylvania*, 364 U. S. 286, 81 S. Ct. 43, 5 L. Ed. 2d 38 (1960).

It is respectfully urged, therefore, that the Director's computation of the gross receipts allocation factor, in accordance with the formula prescribed by the statute, was entirely reasonable and did not contravene appellant's rights under the due process clause of the Fourteenth Amendment.

POINT III

There exists no substantial federal question on this appeal since it has not been demonstrated that the apportionment of Appellant's net worth to New Jersey for franchise tax purposes was "palpably disproportionate" to the value of its local franchise.

Appellant has not established by "clear and cogent evidence" that the New Jersey apportionment formula, as applied to it, was "palpably disproportionate" and resulted in the taxation of "extraterritorial values". *Railway Express Agency* v. *Virginia*, 358 U. S. 434, 443, 444, 79 S. Ct. 411, 417, 418, 3 L. Ed. 2d 450, 457 (1959).

As mentioned under Point II, *supra*, appellant at the hearing below suggested several alternative bases of apportionment, such as assets, loan account, net operating income and payrolls. Taking the year 1955, by way of an

example, the average of these alternative methods suggested by appellant was 3.59%. The percentage under the New Jersey statute was 4.72% which is slightly more than 1% of the average of appellant's suggested methods (Resp. App. C, 10a). Moreover, if a comparison be made between the allocation factor based upon "unconsolidated" gross receipts as computed by the State Director of the Division of Taxation and an allocation fraction based upon the "actual consolidated gross receipts" for 1955, it is clear that the difference between the two is not sufficient to warrant the invalidation of the New Jersey formula. Thus, for the year 1955, the New Jersey percentage based upon unconsolidated gross receipts was 4.72%. The percentage based upon consolidated gross receipts was 3.82%, a difference of less than 1%. In 1957 the New Jersey percentage based upon unconsolidated gross receipts was 3.61% and the percentage based upon consolidated gross receipts was 2.95%, a difference of only approximately ½ of 1%. The average New Jersey percentage for all of the tax years involved based upon unconsolidated gross receipts was 4.58%. The average percentage for all the years involved based upon consolidated gross receipts was 3.54%, a difference of only 1.04%.

Moreover, while the average of all of the methods of allocation suggested by appellant for the year 1955 is 3.59% as compared to the New Jersey percentage of 4.72%, if the New Jersey percentage based upon unconsolidated gross receipts were averaged with appellant's other percentages the total average would be 4.15%. The difference between 4.15% and 4.72% is .57%, ½ of 1%, which is certainly *de minimis*.

Additionally, it may be observed that the other allocation fractions suggested by the appellant were based upon "consolidated" factors. There is, however, no necessary

justification or requirement that the allocation fractions be based upon "consolidated" factors. If a comparison be made between the statutory allocation fraction based upon gross receipts (not consolidated) and the allocation fractions based upon the other factors suggested by the appellant on an *unconsolidated* rather than a consolidated basis, it appears even more forcibly that the statutory allocation fraction applied by the Director was most reasonable. Such a comparison illustrates graphically that the statutory allocation based upon unconsolidated gross receipts was *less* than each of the allocation fractions suggested by the appellant based upon *unconsolidated* assets, loan accounts and net operating income (Resp. App. D, 11a).

The foregoing confirms the essential soundness of the principles enunciated by this Court in determining the reasonableness of state statutory apportionment formulae devised for purposes of local taxation of multi-state taxpayers. This Court has recognized consistently that mathematical precision and exactness in apportionment is impossible of achievement and is not required. *National, C & St. L. Ry.* v. *Browning*, 310 U. S. 362, 365, 60 S. Ct. 968, 970, 84 L. Ed. 1254, 1256 (1940). All that is required is apportionment upon some reasonable basis. *International Harvester Co.* v. *Evatt*, 329 U. S. 416, 67 S. Ct. 444, 91 L. Ed. 390 (1947). The New Jersey statutory allocation fraction based upon gross receipts which was applied to apportion appellant's net worth comes well within the ambit of these standards.

The principal authorities upon which appellant relies do not sustain its contention that the Financial Business Tax Law (1946) as applied to it apportions to New Jersey an unreasonable or palpably disproportionate share of appellant's total net worth. *Hans Rees' Sons* v. *State of*

North Carolina, 283 U. S. 123, 51 S. Ct. 385, 75 L. Ed. 879 (1913) involved a direct tax upon net income imposed by the state of North Carolina upon a foreign manufacturing corporation. By a statutory allocation, North Carolina attributed between 66 and 85% of the taxpayer's net income for the years in question to that state. In the view of the Court, however, the taxpayer had proved that the percentage of its income attributable to North Carolina for the years in question did not in any event exceed 21.7%. On the basis of these facts, the Court held the state allocation was arbitrary and unreasonable and, therefore, unconstitutional.

Hans Rees' Sons is inapplicable because there was involved, not a privilege tax, but a direct tax upon net income. Just as a state may not impose a direct property tax upon securities issued by the Federal Government, *Werner Mach. Co.* v. *Div. of Taxation*, 350 U. S. 492, 76 S. Ct. 534, 100 L. Ed. 634 (1956), so it may not impose a direct tax upon net income which was not created or earned within the taxing jurisdiction, *Bass, Ratcliff & Gretton* v. *State Tax Commission, supra*; *Underwood Typewriter Co.* v. *Chamberlain, supra*; *Northwestern States Portland Cement Co.* v. *Minnesota*, 358 U. S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421 (1959); *Williams* v. *Stockham Valves & Fittings Inc.*, 358 U. S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421 (1959). Since North Carolina sought in the *Hans Rees' Sons* case to tax more than three times the income which the Court found was, under any view of the facts, attributable to North Carolina, the tax was unconstitutional.

In the instant suit, however, the New Jersey statute imposes a franchise or privilege tax. Petitioner has not shown that the measure of the value of that privilege as fixed by the New Jersey statute for tax purposes is beyond any reasonable proportion to the benefit conferred. Fur-

thermore, the discrepancy between the statutory measure of the tax imposed upon appellant and the value of its total net worth which it concedes could be attributable to New Jersey is insubstantial.

The case of *Wallace* v. *Hines*, 253 U. S. 66, 40 S. Ct. 435, 64 L. Ed. 782 (1920) is even less helpful to appellant. *Wallace* v. *Hines* was an excise tax upon an interstate railroad measured by the taxpayer's property within North Dakota. The value of the North Dakota property was defined to bear the same proportion to the total value of the railroad property wherever located as the length of its trackage in North Dakota bore to its trackage everywhere. The Supreme Court held that, since North Dakota was a plains state, almost entirely agricultural, without great railroad depots or terminals, while the other states traversed by its tracks were mountainous and contained the railroad's major installations, there was no factual basis for assuming that the value of the taxpayer's property was distributed evenly according to its main track mileage. The court also pointed out that a substantial part of the value of the railroad's assets consisted of land grants and mortgages on land in other states. The Court held that it would not be permissible to allocate value according to main trackage attributing a portion of such mortgages and land grants to the North Dakota property, unless it could be shown in some plain and fairly intelligible way that it adds to the value of the road and the right exercised in the State.

In the case *sub judice*, the record is replete with facts demonstrating that appellant's "headquarters" assets and its investment in subsidiary corporations do contribute in some real measure to the value of its New Jersey business as well as its business conducted throughout the nation. *Wallace* v. *Hines* certainly stands as no bar to allocating, by a gross receipts formula, a portion of these assets and

investments to the New Jersey taxable net worth. In *Bass, Ratcliff & Gretton v. State Tax Commission, supra*, the United States Supreme Court stated, "In *Wallace* v. *Hines* • • • it was recognized that a State, in imposing an excise tax upon foreign corporations in respect to doing business within the State, may look to the property of such corporations beyond its borders to 'get the true value of the things within it, when they are part of an organic system of wide extent,' giving the local property a value above that which it would otherwise possess, and may therefore take into account property situated elsewhere when it 'can be seen in some plain or fairly intelligible way that it adds to the value of the [property] and the rights exercised in the State'" (266 U. S. at p. 282; 45 S. Ct. p. 84; 69 L. Ed. at p. 287). Moreover, *Wallace* v. *Hines* is fully consistent with subsequent cases holding that when a taxpayer, engaged in a multiform business, owns property unconnected with its business or activities within the taxing state, the value of such property must be excluded in computing the measure of the tax. Where, however, such property adds to the value of the privilege enjoyed by a unitary and integrated enterprise within the State, it may be included in part in the measurement of the tax. *Ford Motor Co.* v. *Beauchamp, supra.* Compare *Commonwealth* v. *Columbia Gas & Electric Corp.*, 336 Pa. 209, 8 A. 2d 404 (Sup. Ct. 1939) with *Commonwealth* v. *Ford Motor Co.*, 350 Pa. 236, 38 A. 2d 329, *supra.*

CONCLUSION

The New Jersey Supreme Court in a careful and well-reasoned opinion determined that it was entirely reasonable and proper for the State Legislature to provide for the apportionment of the net worth of a multistate taxpayer, conducting a local financial business, by a fraction based upon gross receipts for purposes of valuing the

franchise privilege accorded to such a taxpayer by the State of New Jersey. The Supreme Court of New Jersey properly determined that the computation of the apportionment fraction based upon gross receipts did not result in a "palpably disproportionate" attribution of the appellant's net worth to New Jersey for franchise tax purposes. Moreover, it did not appear by any cogent and persuasive evidence that the proportion of appellant's net worth actually allocated to New Jersey for tax purposes under the statutory formula was palpably or egregiously disproportionate to that proportion of net worth which might be apportioned to New Jersey under other conceivable methods of allocation. The foregoing demonstrates conclusively that the appellant has raised no substantial Federal question which would warrant the further attention of this Court and, therefore, it is respectfully urged that the instant appeal be dismissed.

Respectfully submitted,

ARTHUR J. SILLS,
Attorney General of New Jersey
Attorney for Respondent, Director of the Division of Taxation.

ALAN B. HANDLER,
Deputy Attorney General,
Of Counsel and on the Brief.

Dated: August 7, 1962

APPENDIX A

Excerpts from Appellant's Petition of Appeal

(Filed—October 29, 1957)

* * *

4. Without New Jersey, but not within this State, Taxpayer also has engaged and engages in a holding-company business, consisting of beneficially owning, holding, managing and controlling all, or substantially all, of the capital stock of certain subsidiary corporations. At all times relevant hereto, said subsidiaries were engaged in the business of lending money in Canada and in numerous states of the United States of America, including some subsidiaries operating in New Jersey.

5. Taxpayer's said holding-company business did not and does not constitute a "financial business" as defined in Section 2(b) of the Statute; and was not and is not within the territorial limits of New Jersey. Therefore, so much of Taxpayer's total net worth as was and is represented by its said non-financial or holding-company business, was not and is not subject to the tax in New Jersey. Although such of Taxpayer's subsidiaries as do a financial business in New Jersey, are themselves separately taxable under Section 6 of the Statute, Taxpayer's holding-company business in respect to them is neither a financial business nor located within the territorial limits of New Jersey.

6. As an incident to Taxpayer's said holding-company business, Taxpayer, from its headquarters office in Chicago and from 3 regional headquarters outside New Jersey, (at

all times relevant hereto) supervised its subsidiaries' operations; provided accounting services to them; and, on occasion, advanced money to them for their corporate purposes. In consideration of such services and advances, Taxpayer (at all times relevant hereto) received from the respective subsidiaries, supervision fees and interest on such advances.

* * *

12. By said adjustments and redeterminations, the Bureau recomputed Taxpayer's New Jersey Taxable Net Worth for each of the years in question, as follows:

(a) The Bureau first increased Taxpayer's total net worth (as adjusted by Taxpayer in said returns), by adding thereto certain amounts representing dividends payable to Taxpayer's stockholders holding more than 10% of Taxpayer's total outstanding stock, as required by Section 2(c)(1)(5) of the Statute (which dividends had inadvertently been omitted by Taxpayer). The Bureau then decreased such adjusted net worth by increasing Taxpayer's bad-debt reserve so as to conform to the Bureau's revised policy in respect thereto. *These two adjustments are not in controversy.*

(b) To Taxpayer's total net worth as so adjusted the Bureau then added an amount equal to the amount by which the book value of Taxpayer's stock in its subsidiaries *per the subsidiaries' books*, exceeded the book value or cost thereof *per the Taxpayer's books*, (with a minor allowance with respect to one subsidiary in which Taxpayer owned less than all of the capital stock). As the result, the Bureau arrived at a figure which in fact represents *consolidated* net worth. This is protested.

(c) As a further adjustment, the Bureau then sought to exclude from such *consolidated* net worth, as non-taxable, that part thereof which was represented by Taxpayer's non-financial or holding-company business. However, the Bureau did so in an erroneous manner. The Bureau disallowed Taxpayer's asserted non-financial-business deduction from total net worth [which is described in paragraph 8(b) above]; and, instead thereof, excluded from such *consolidated* net worth that proportion thereof which Taxpayer's *unconsolidated receipts* (interest, dividends and supervision fees) from said *non-financial or holding-company business*, bore to Taxpayer's total gross income from all of its businesses wherever located. In other words, Taxpayer in its returns had excluded its non-financial business by a net-worth deduction based on an apportionment of assets [see paragraph 8(b) above]; whereas the Bureau has substituted an apportionment technique and an accounting principle which are inappropriate to the nature of Taxpayer's various businesses. Furthermore, in doing so, the Bureau mixed *consolidated* factors with *unconsolidated* factors having no reasonable relationship to one another. This resulted in an *erroneous and inflated* amount as Financial-Business Net Worth. This the Taxpayer protests.

(d) The Bureau then excluded from total net worth [as erroneously computed and inflated as stated in subparagraphs (b) and (c) of this paragraph], that proportion of such total net worth which Taxpayer's gross income from its financial business *without New Jersey*, bore to the sum of (i) its non-financial receipts (wrongly measured as aforesaid) and (ii) its gross income from its financial business wherever located,—

Appendix A

thus leaving as New Jersey Taxable Net Worth that proportion of such total net worth which Taxpayer's gross income from its financial business *within New Jersey*, bore to the sum of (i) its non-financial receipts wrongly measured), and (ii) its gross income from its financial business wherever located. The Taxpayer protests the Bureau's application of erroneous fractions to said erroneous and inflated base.

* * *

16. Pursuant to Taxpayer's request, a hearing was had on August 28, 1957, before the Supervisor of the Bureau, acting for the Director. At said hearing all of Taxpayer's protests and objections were disallowed; except that Taxpayer was sustained with respect to its right under Section 6 of the Statute to exclude, from its New Jersey Taxable Net Worth, the value of its subsidiaries operating in New Jersey which are themselves separately taxable under the Statute.

* * *

19. At all times relevant hereto, said Headquarters Property, although used in the management of Taxpayer's entire business, was located entirely outside New Jersey. Accordingly, that proportion of Taxpayer's entire net worth which said Headquarters Property bore to Taxpayer's total assets, was and is outside the territorial limits of, and not taxable by, New Jersey. Therefore, on any revision of Taxpayer's determination of New Jersey Taxable Net Worth, or of the Bureau's redetermination thereof, the aforesaid proportion of adjusted net worth should be excluded from Taxpayer's adjusted net worth, in order to exclude from taxation by New Jersey, the portion thereof

represented by such non-income-producing Headquarters Property outside of New Jersey.

22. Therefore, Taxpayer petitions for a judgment with respect to Taxpayer's tax liability for the tax-payment years 1954, 1955, 1956 and 1957 under the New Jersey Financial Business Tax Law (1946), [N.J.S.A. 54:10B-1 *et seq.*], as follows: * * *

D. Adjudging and declaring that, with respect to this Taxpayer and the 4 tax-payment years in question, the Statute, and the adjustments and redeterminations with respect to Taxpayer's tax liability thereunder, which the Bureau and the Director made purportedly under and in accordance with the Statute, are unlawful and unconstitutional, * * *

* * *

APPENDIX B

Excerpts from Record Below

(Filed—January 25, 1960)

Transcript of testimony before the Division of Tax Appeals, Commissioner Ellis M. Kopp presiding, in Room 441, State House Annex, Trenton, New Jersey, on Tuesday, January 12, 1960, at 10:30 A.M.

Appearances:

PITNEY, HARDIN & WARD, by ROGER C. WARD, Esquire, for the Petitioner.

DAVID D. FURMAN, Attorney General, by MURRY BROCHIN, Esquire, Deputy Attorney General.

• • •

"Mr. Ward:

• • •

"[W]e will concede that our business is unitary in the sense of the cases which discuss apportionment in the cases of unitary or non-unitary businesses. • • •

"We concede each of the components of our net worth are components of the net worth and are part of the unitary business in the sense of those cases." (P85a-21 to 33)*

• • •

"Mr. Ward: • • • We concede now it was proper, or at least tolerable to consolidate value for subs' stock investment."

• • •

* These and similar references are to pages in the Appendix of Appellant filed with the New Jersey Supreme Court.

Appendix B

"Mr. Ward: * * * The subsidiaries could be included in the total net worth before apportionment. I would concede that." (P89a-15 to 33)

* * *

"Q. [Question by Mr. Ward to R. Bradner Mead, for petitioner on direct examination] * * *. Is it possible to relate the New Jersey Household Finance average loan account shown in Item No. 2 for each of the four years to the total consolidated average loan account shown in Item No. 3 for each of the four years? A. Yes.

"Q. Have you done that computation? A. Yes."

* * *

"Q. For 1954 tax year, please. A. 4.03%.

"Q. '55? A. 3.75%.

"Q. '56? A. 3.31%.

"Q. '57? A. 2.91%." (P117a-32 to P118a-14)

* * *

"Q. What, then, is your opinion as to the appropriateness and reasonable accuracy from an accountancy standpoint of the six apportionment methods? A. Well, I think each method would produce reasonably accurate results. None of them are perfect. Each has some defects, but they all bear some relationship to the contribution to net worth of each individual segment of the business of the corporation. * * *" (P119a-29 to 36)

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MATTHEW BENDER & COMPANY
MB -63

microcard

PC1016₂

Exhibit P-1 (Annex 12 to Statement of Facts)

Adjusted Net Worth Apportioned on Various Bases

(Opposite) ☛

ANNEX 12

ADJUSTED NET WORTH APPORTIONED ON VARIOUS BASES

		(a) Receipts of taxpayer (preceding year)		(b) Assets of taxpayer (12/31 preceding year)		(c) Consolidated assets (12/31 preceding year)	
		(1)	(2)	(3)	(4)	(5)	(6)
Tax year	Class of asset or business	% of total, Annex 7, column 10	Allocable portion of adj. net worth	% of total, Annex 7, column 5	Allocable portion of adj. net worth	% of total, Annex 9, column 2	Allocable portion of adj. net worth
1954	SUBS. (U.S. & CAN. CONSOL'D)	4.47	$ 5,575,513	30.28	$ 37,768,793	32.01	$ 39,926,654
	HFC HEADQUARTERS	0.00	-	6.28	7,833,158	6.12	7,633,587
	HFC BRANCHES OUTSIDE N. J.	89.91	112,147,996	59.76	74,539,733	58.28	72,693,702
	HFC BRANCHES IN N. J.	5.62	7,008,307	3.68	4,590,132	3.59	4,477,873
	TOTAL (Annex 8, line 8)	100.	$124,731,816	100.	$124,731,816	100.	$124,731,816
1955	SUBS (U.S. & CAN. CONSOL'D)	15.94	$ 21,328,297	32.30	$ 43,218,570	34.47	$ 46,122,109
	HFC U. S. HEADQUARTERS	0.00	-	5.35	7,158,494	5.18	6,931,028
	HFC BRANCHES OUTSIDE N. J.	79.34	106,158,322	58.90	78,810,333	57.01	76,281,445
	HFC BRANCHES IN N. J.	4.72	6,317,003	3.45	4,616,225	3.34	4,469,040
	TOTAL	100.	$133,803,622	100.	$133,803,622	100.	$133,803,622
1956	SUBS (U.S. & CAN. CONSOL'D)	17.48	$ 25,707,529	36.75	$ 54,047,580	38.61	$ 56,783,049
	HFC U. S. HEADQUARTERS	.02	29,414	4.65	6,838,673	4.52	6,647,485
	HFC BRANCHES OUTSIDE N. J.	78.12	114,885,153	55.56	81,711,116	53.93	79,313,904
	HFC BRANCHES IN N. J.	4.38	6,446,148	3.04	4,470,875	2.94	4,323,806
	TOTAL	100.	$147,068,244	100.	$147,068,244	100.	$147,068,244
1957	SUBS (U.S. & CAN. CONSOL'D)	28.17	$ 46,286,845	40.77	$ 66,990,226	42.12	$ 69,208,445
	HFC U. S. HEADQUARTERS	0.01	16,431	4.28	7,032,577	4.17	6,851,833
	HFC BRANCHES OUTSIDE N. J.	68.20	112,066,744	52.25	85,853,306	51.06	83,897,987
	HFC BRANCHES IN N. J.	3.62	5,942,528	2.70	4,436,439	2.65	4,354,283
	TOTAL	100.	$164,312,548	100.	$164,312,548	100.	$164,312,548

(c) lidated assets preceding year)		(d) Consolidated receipts (preceding year)		(e) Consol'd net op. income (preceding year)	
(6) Allocable portion of adj. net worth	(7) % of total, Annex 9, column 4	(8) Allocable portion of adj. net worth	(9) % of total, Annex 9, column 6	(10) Allocable portion of net worth	
$ 39,926,654	31.28	$ 39,061,112	37.77	$ 47,111,207	
7,633,587	0.00	-	-	-	
72,693,702	64.67	80,664,065	58.12	72,494,131	
4,477,873	4.05	5,051,639	4.11	5,126,478	
$124,731,816	100.	$124,731,816	100.	$124,731,816	
$ 46,122,109	31.92	$ 42,710,116	38.27	$ 51,206,646	
6,931,028	0.00	-	-	-	
76,281,445	64.26	85,982,208	57.73	77,244,831	
4,469,040	3.82	5,111,298	4.00	5,352,145	
$133,803,622	100.	$133,803,622	100.	$133,803,622	
$ 56,783,049	36.26	$ 53,326,945	42.58	$ 62,621,558	
6,647,485	0.02	29,414	-	-	
79,313,904	60.35	88,755,685	54.05	79,490,386	
4,323,806	3.37	4,956,200	3.37	4,956,200	
$147,068,244	100.	$147,068,244	100.	$147,068,244	
$ 69,208,445	41.29	$ 67,844,651	45.52	$ 74,795,072	
6,851,833	0.01	16,431	-	-	
83,897,987	55.75	91,604,246	51.58	84,752,412	
4,354,283	2.95	4,847,220	2.90	4,765,064	
$164,312,548	100.	$164,312,548	100.	$164,312,548	

APPENDIX C

Excerpts from Appellant's Main Brief Below†

* * *

Method of Allocation*	New Jersey Net Worth Dollars	Percent of Total Net Worth
1. Unconsol. Gross Receipts	$6,317,003	4.72%
2. Taxpayer's Assets	4,616,225	3.45
3. Consol. Assets	4,469,04	3.34
4. Consol. Receipts	5,111,298	3.82
5. Consol. Net Op. Income	5,352,145	4.00
6. Consol. Payroll	4,281,716	3.20
7. Consol. Loan Account	5,017,636	3.75
8. Average of 2 Through 7	4,808,010	3.59

*Line 1 is the Director's method. The derivation of the percentages of the New Jersey portion of taxpayer's net worth shown in Lines 2-5 is summarized above at p. 11, based upon four different classifications or modes of expressing taxpayer's total business enterprise. The percentages shown in Lines 6 and 7 were testified to by Mr. Mead; and that the actual arithmetic of applying the percentages to an adjusted total net worth of $133,803,622 does not appear in the record, but was done by counsel for purposes of this brief."

† The foregoing excerpt appears on page 29 of Appellant's Brief filed with the New Jersey Supreme Court. The table refers only to the year 1955.

APPENDIX D

Comparison of Allocation Fractions*

	1954	1955	1956	1957
(1) *Assets*				
New Jersey	14,138	13,893	14,075	14,989
Everywhere	267,743	272,211	292,792	328,824
Allocation fraction	5.2804%	5.1038%	4.8072%	4.5584%
(2) *Loan Account*				
New Jersey	13,525	13,774	13,456	14,310
Everywhere	223,028	242,787	252,228	283,968
Allocation fraction	6.0643%	5.6733%	5.3349%	5.0393%
(3) *Net Operating Income*				
New Jersey	1,776	1,809	1,593	1,756
Everywhere	26,883	27,746	27,124	33,075
Allocation fraction	6.6064%	6.4874%	5.8730%	5.3091%
Average of 1, 2 and 3:	5.9837%	5.7548%	5.3384%	4.9689%
Statutory allocation fraction based on Gross Receipts	5.6187%	4.7211%	4.3831%	3.6166%

* The figures are derived from the tables appearing in Appellant's Brief filed with the New Jersey Supreme Court on pages 11 and 29 and are derived from Annex 12. (See Resp. App. B, 8a-9a).